

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,	)	
	)	
	)	
	)	
v.	)	ID No. 1905015433,
	)	ID No. 1912021422
QY-MERE MADDREY,	)	
	)	
	)	
Defendant.	)	
	)	

Date Submitted: November 16, 2022  
Date Decided: February 6, 2023

**ORDER**

Upon consideration of Defendant’s Motion for Modification of Sentence (“Motion”), Superior Court Criminal Rule 35(b), statutory and decisional law, and the record in these cases, **IT APPEARS THAT:**

(1) On November 18, 2021, Defendant pled guilty to Manslaughter, Possession of a Firearm During the Commission of a Felony (“PFDCF”), and Possession of a Firearm by a Person Prohibited/Possession of Ammunition by a Person Prohibited (“PFBPP/PABPP”).<sup>1</sup> By Order dated March 18, 2022,<sup>2</sup> effective May 23, 2019, Defendant was sentenced as follows: for Manslaughter, IN19-12-0281-W, 25 years at Level V, suspended after 8 years, for 17 years at Level IV,

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<sup>1</sup> ID No. 1905015433, D.I. 31; ID No. 1912021422, D.I. 27.

<sup>2</sup> ID No. 1905015433, D.I. 32; ID No. 1912021422, D.I. 32.

suspended after 6 months, followed by decreasing levels of supervision;<sup>3</sup> for PFDCF, IN19-12-0282-W, 5 years at Level V;<sup>4</sup> and for PFBPP/PABPP, IN19-08-0872, 10 years at Level V.<sup>5</sup> In total, the Court sentenced Defendant to 23 years of unsuspended Level V time. In deciding Defendant's sentence, the Court specifically noted that "Defendant is in need of correctional treatment."<sup>6</sup>

(2) On April 13, 2022, Defendant filed a motion seeking modification of his sentence pursuant to Rule 35(b).<sup>7</sup> Because Defendant filed his motion *pro se* while still represented,<sup>8</sup> the Court declined to consider the motion and referred it to counsel for consideration.<sup>9</sup> Defense counsel did not file a motion on Defendant's behalf.

(3) Defendant filed a *pro se* letter with the Court on November 16, 2022,

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<sup>3</sup> ID No. 1905015433, D.I. 32; ID No. 1912021422, D.I. 32. The first two years of this sentence are mandatory pursuant to 11 *Del. C.* § 4205(b)(2).

<sup>4</sup> ID No. 1905015433, D.I. 32; ID No. 1912021422, D.I. 32. All time imposed for this charge is mandatory under 11 *Del. C.* § 1447A(c).

<sup>5</sup> ID No. 1905015433, D.I. 32; ID No. 1912021422, D.I. 32. All time imposed for this charge is mandatory under 11 *Del. C.* § 1448(e)(1)(c).

<sup>6</sup> ID No. 1905015433, D.I. 32; ID No. 1912021422, D.I. 32.

<sup>7</sup> ID No. 1905015433, D.I. 35; ID No. 1912021422, D.I. 36.

<sup>8</sup> Defendants are guaranteed the right to assistance of counsel on appeal pursuant to Supreme Court Rule 26. A defendant may only file an appeal with the Supreme Court "within thirty days after the date of . . . judgment;" thus a defendant is entitled to the assistance of counsel up to thirty days after the entry of judgment. Super. Ct. R. 6(a)(iii); 10 *Del. C.* § 147. Under Superior Court Rule 47, "[t]he court will not consider *pro se* applications by defendants who are represented by counsel unless the defendant has been granted permission to participate with counsel in the defense." Super. Ct. Crim. R. 47. Because Defendant filed his *pro se* motion on April 13, 2022, less than thirty days after he was sentenced, it had the effect of a "legal nullity." *Jones v. State*, 2050 WL 2280509, at \*3 (Del. May 7, 2020) (TABLE).

<sup>9</sup> ID No. 1905015433, D.I. 33; ID No. 1912021422, D.I. 35.

claiming that the Court misfiled his Motion.<sup>10</sup> He claims that his Motion was only docketed in case ID No. 1905015433 and that it should have also been docketed in case ID No. 1412021422.<sup>11</sup> Defendant pled guilty and was sentenced in both matters simultaneously,<sup>12</sup> so any motion filed in one case should be filed with the other. Accordingly, Defendant's original motion for modification of sentence is docketed in both cases.<sup>13</sup>

(4) In his Motion, filed on April 13, 2022, Defendant asks the Court to reduce his sentence for Manslaughter from 8 years at Level V to 2 years at Level V.<sup>14</sup> Defendant alleges that at sentencing, the Court exceeded the terms of his plea agreement, stating, "I was giving a plea to 17 years[, the] State [capped] the plea at 20 years, and the Judge gave me 23."<sup>15</sup> Defendant cited his rehabilitative efforts, academic achievements, familial hardship, remorse for his actions, and the promise of employment on release as bases for the reduction or modification of his sentence.<sup>16</sup>

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<sup>10</sup> ID No. 1905015433, D.I. 34; ID No. 1412021422, D.I. 34. Defendant filed a second letter and a "Motion for Modification of Sentence Reduction" ("Second Motion") on December 28, 2022, asking the Court for an update on his Motion. The Court considers Defendant's Second Motion as a supplement to his original Motion. ID No. 1412021422, D.I. 37.

<sup>11</sup> ID No. 1905015433, D.I. 34; ID No. 1412021422, D.I. 34.

<sup>12</sup> ID No. 1905015433, D.I. 31; ID No. 1412021422, D.I. 31.

<sup>13</sup> ID No. 1905015433, D.I. 35; ID No. 1412021422, D.I. 36.

<sup>14</sup> ID No. 1905015433, D.I. 35; ID No. 1412021422, D.I. 36.

<sup>15</sup> ID No. 1905015433, D.I. 35; ID No. 1412021422, D.I. 36.

<sup>16</sup> ID No. 1905015433, D.I. 35; ID No. 1412021422, D.I. 36-37.

(5) Rule 35(b) governs motions for modification or reduction of sentence.<sup>17</sup>

“Under Rule 35(b), a motion for sentence modification must be filed within ninety days of sentencing, absent a showing of ‘extraordinary circumstances.’”<sup>18</sup> Rule 35(b) also mandates that “[t]he [C]ourt *will not* consider repetitive requests for reduction of sentence.”<sup>19</sup> “[T]his bar is absolute and flatly ‘prohibits repetitive requests for reduction of sentence.’”<sup>20</sup>

(6) Defendant’s Motion is not procedurally barred as untimely or repetitive; therefore, the Court will address Defendant’s Motion on the merits.<sup>21</sup> Rule 35(b) places the burden of proof on “the movant to establish cause to modify a lawfully imposed sentence.”<sup>22</sup> Although Rule 35(b) does not set forth specific criteria which must be met before the Court may grant a Rule 35(b) motion, “common sense dictates that the Court may modify a sentence if present circumstances indicate that the previously imposed sentence is no longer

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<sup>17</sup> Super. Ct. Crim. R. 35(b).

<sup>18</sup> *Croll v. State*, 2020 WL 1909193, at \*1 (Del. Apr. 17, 2020) (TABLE) (affirming the Superior Court’s denial of a motion for modification of sentence where the motion was repetitive and filed beyond the 90-day limit); see *Hewett v. State*, 2014 WL 5020251, at \*1 (Del. Oct. 7, 2014) (“When a motion for reduction of sentence is filed within ninety days of sentencing, the Superior Court has broad discretion to decide whether to alter its judgment.”).

<sup>19</sup> Super. Ct. Crim. R. 35(b) (emphasis added).

<sup>20</sup> *State v. Redden*, 111 A.3d 602, 609 (Del. Super. 2015) (quoting *Thomas v. State*, 2002 WL 31681804, at \*1 (Del. Nov. 25, 2002)).

<sup>21</sup> See Super. Ct. Crim. R. 35(b); see, e.g., *State v. Joseph*, 2018 WL 1895697, at \*1 (Del. Super. Apr. 11, 2018).

<sup>22</sup> *State v. Joseph*, 2018 WL 1895697, at \*1 (Del. Super. Apr. 11, 2018).

appropriate.”<sup>23</sup>

(7) Defendant is correct in his recollection that the State agreed not to recommend more than 20 years of unsuspended Level V time; however, pursuant to Superior Court Criminal Rule 11(e)(1)(B), the Court is not bound by the terms of the State’s recommendation.<sup>24</sup> Further, the Court finds that Defendant has not presented any evidence that would warrant a modification or reduction in his sentence. Accordingly, the Court finds that Defendant’s sentence is appropriate for all the reasons stated at the time of sentencing. No additional information has been provided to the Court to warrant a sentence reduction or modification.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Defendants’ Motion for Modification of Sentence is **DENIED**.

/s/ Jan R. Jurden  
Jan R. Jurden, President Judge

Original to Prothonotary

cc: Qy-mere Maddrey (SBI # 00522962)  
John S. Taylor, DAG  
Zachary Rosen, DAG

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<sup>23</sup> *State v. Bailey*, 2017 WL 8787504, at \*1 (Del. Super. Oct. 3, 2017).

<sup>24</sup> Super. Ct. Crim. R. 11(e)(1)(B); *State v. Walker*, 2007 WL 1098146, at \*1 (Del. Super. Ct. Apr. 11, 2007) (dismissing the defendant’s Rule 61 motion for postconviction relief, stating that “[t]he sentencing recommendations of the State, negotiated as part of a plea agreement, are not binding on the Court)).